



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Southwest Marine, Inc.

File: B-229596; B-229598

Date: January 12, 1988

DIGEST

A compelling reason exists for canceling an invitation for bids (IFB) for the overhaul of a naval vessel after bid opening and resoliciting the requirements under a request for proposals where the unavailability of the naval vessel renders the IFB inadequate to express the minimum needs of the government.

DECISION

Southwest Marine, Inc., protests the Navy's cancellation of invitation for bids (IFB) No. N62678-87-B-0203 and the subsequent resolicitation of the requirement under request for proposals (RFP) No. N62678-88-R-0004, for the regular overhaul of the "USS Anchorage." Southwest, the apparent low, responsive bidder under the IFB, alleges that cancellation of the IFB was without a rational basis since the RFP is identical to the IFB in all material respects.

We deny the protest.

On July 10, 1987, the Navy issued the IFB for the regular overhaul of the "USS Anchorage." The IFB's production performance period, the period set aside by the Fleet to make the ship available to the contractor for repair work, was to begin on January 18, 1988, with completion of repairs required by August 16. Five bids were timely received and opened on September 23. The apparent low bidder was found to be nonresponsive on September 28 and filed a protest with the contracting officer on September 29. The contracting officer determined Southwest to be the next lowest responsive bidder and initiated a pre-award survey pending the outcome of the protest before him.

041021

On October 29, the Commander in Chief of the Pacific Fleet requested a change in the availability period of the "USS Anchorage" due to operational requirements of the vessel; the ship would not be available until April 1988. The contracting officer determined that the change in availability period would alter the actual needs of the agency as stated in the IFB and canceled the solicitation on November 3. All bidders were so informed. On November 5, the Navy issued the RFP for the regular overhaul of the "USS Anchorage" incorporating: (1) a new production performance period of April 4 through November 3, 1988 (a slippage of approximately 77 days); (2) the furnishing of a new telephone system not previously required under the IFB; and (3) a relaxation of the number of milestone dates required in the bidder's proposed schedule. This protest followed.

Southwest maintains that the revisions made to the scope of work in the RFP are not sufficient to warrant cancellation of the IFB. Specifically, Southwest argues that the change in the production performance period is not a material factor that would affect the price, quality or quantity of services requested. Southwest maintains that the agency could have accommodated the changed availability period by requesting an extension of the bid acceptance period since the actual number of days to perform the overhaul remained the same. Similarly, Southwest contends that a reduction in milestone dates does not alter the ultimate performance of the contract but merely reduces the detail to be provided in the RFP. With respect to the addition of a new telephone system in the RFP, Southwest contends that this would have no affect on competition since all competing shipyards must deal with the same supplier and, furthermore, the Navy could have acquired this item by using the "Additional Government Requirements" clause in the contract.

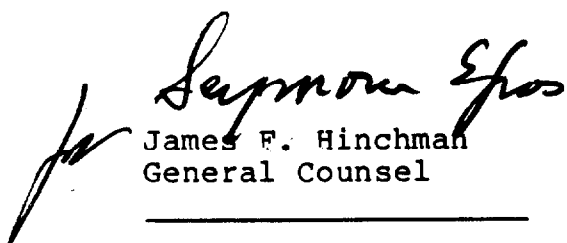
Although a contracting officer has broad discretion to cancel an IFB, he must have a compelling reason to do so after bid opening because of the potential adverse impact on the competitive bidding system of cancellation after bid prices have been exposed. Aero-Executive Helicopters, B-227133, Aug. 17, 1987, 87-2 CPD ¶ 167; Alliance Properties, Inc., 64 Comp. Gen. 854 (1985), 85-2 CPD ¶ 299. As a general rule, the need to change the requirements after the opening of bids to express properly the agency's minimum needs constitutes such a compelling reason. Id. Our Office generally regards cancellation after opening to be appropriate when an award under the ostensibly deficient solicitation would not serve the actual minimum needs of the government or when other bidders would be prejudiced by such an award. United States Elevator Corp., B-225625, Apr. 13, 1987, 87-1 CPD ¶ 401. Our review is limited to considering the reasonableness of the exercise of the contracting

official's discretion. Motorola, Inc., et al., B-221391.2, et al., May 20, 1986, 86-1 CPD ¶ 471.

We find that the record establishes a compelling reason to cancel the IFB. The IFB included a production performance period which did not properly express the agency's minimum needs due to the changed availability date of the vessel (a slippage of 77 days).^{1/} We view time for performance as a material factor in a solicitation that likely will affect price. Aero-Executive Helicopters, B-227133, supra; Pierce Mfg., Inc., B-224007, Oct. 28, 1986, 86-2 CPD ¶ 483. We agree with the Navy that specific dates become very critical to shipyards because of the possibility of varying workloads and changes in cost rates. Specifically, the record shows that overhaul of a vessel is a very labor-intensive undertaking. Further, labor supply is directly related to the amount of other work in a yard at a specific time--a yard that is not available for additional work at a given time may be available and competitive 2 or 3 months thereafter. Thus, a change in ship availability dates may potentially affect bidder's prices to various degrees, and may also affect which bidders participate in the procurement. We therefore find a rational basis to the cancellation on this basis alone.

Finally, Southwest complains that the cancellation was procedurally deficient since the contracting officer did not prepare a formal written determination stating a compelling reason for cancellation. Such a procedural failure does not in itself constitute a basis to sustain a protest, however, where, as here, the cancellation in fact is warranted. Feinstein Construction Inc., B-218317, June 6, 1985, 85-1 CPD ¶ 648.

The protest is denied.


James F. Hinchman
General Counsel

^{1/} Southwest argues that a bid protest filed under the IFB with our Office also would have involved a slippage of approximately 77 days. In a bid protest, the agency's requirements remain the same and, if necessary, the agency can override the bid protest stay provisions to fulfill its unchanged requirements. Here, however, the underlying requirements on which the competition was based have changed.